

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUL 17 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Amendment of Section 73.202(b) )  
Table of Allotments )  
FM Broadcast Stations )  
(Chillicothe and Ashville, Ohio) )

MM Docket No. 99-322  
RM-9762

TO: John A. Karousos, Assistant Chief  
Audio Division, Media Bureau

**COMMENTS IN RESPONSE TO  
"REQUEST FOR SUPPLEMENTAL INFORMATION"**

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## SUMMARY

Because the proposed reallocation of Channel 227B from Chillicothe to Ashville would be prohibited by the Commission's recently-adopted ownership rules, this proceeding must be dismissed. And even if the Commission were to ignore those ownership rules and continue its consideration of the proposed reallocation, a *Tuck* analysis reveals that Ashville is not truly independent of the Columbus Urbanized Area. But even if that were not the case, a *Tuck* analysis is in any event no longer relevant here in view of the Commission's adoption of Arbitron markets as the appropriate focus of radio market analysis. And more fundamentally, *Tuck* is inapt because, as a result of repeated deregulatory changes, the *Tuck* analysis constitutes nothing more than an effort to justify allocation decisions on the basis of predictions which cannot be reliably made and the ultimate accuracy of which has not been, and cannot in any event be, proven.

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## **I. Introduction**

1. North American Broadcasting, Co., WLCT Radio Incorporated, and Franklin Communications, Inc. ("Joint Petitioners") hereby submit their Comments in response to the Request for Supplemental Information, DA 03-1842, released June 2, 2003 ("*Request*") in the above-captioned proceeding. In the *Request*, the Commission asked that the proponent of the reallocation of Channel 227B from Chillicothe to Ashville submit a *Tuck* analysis to demonstrate that Ashville is independent from the Columbus Urbanized Area.<sup>1</sup> The *Request* also specified that interested parties could also submit comments on the matter. As discussed below, because the proposed reallocation would be prohibited by the Commission's ownership rules, this proceeding must be dismissed. And even if the Commission were to ignore those ownership rules and continue its consideration of the proposed reallocation, a *Tuck* analysis reveals that Ashville is not truly independent of the Columbus Urbanized Area. But even if that were not the case, a *Tuck* analysis is in any event no longer relevant here in view of the Commission's adoption of Arbitron markets as the appropriate focus of radio market analysis. And more fundamentally, *Tuck* is inapt because, as a result of repeated deregulatory changes, the *Tuck* analysis constitutes nothing more than an effort to justify allocation decisions on the basis of predictions which cannot be reliably made and the ultimate accuracy of which has not been, and cannot in any event be, proven. Accordingly, Joint Petitioners continue to believe that the proposed reallocation of Channel 227B should be rejected or, if adopted in order (supposedly) to assure "local service" to Ashville, that reallocation should be subject to a site restriction realistically designed to achieve that result.

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<sup>1</sup> *Request* at 3 (citing *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) and *Headland, Alabama, and Chattahoochee, Florida*, 10 FCC Rcd 10,352 (1995)).

**II. This Proceeding Must Be Dismissed Because The Proposed Reallotment Is Proscribed By The Recently-Adopted Multiple Ownership Rules.**

2. As an initial matter, this proceeding must be dismissed. In *In the Matter of 2002 Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 03-127, MB Docket No. 02-277, released July 2, 2003 (“*Ownership R&O*”), the Commission adopted new limitations on the number of radio stations that a single entity may own or control in a market. In so doing, the Commission chose to use, as a definition of “market”, the Arbitron Metro, as reflected in the BIA Media Access Pro database. *Ownership R&O* at ¶280. The Commission imposed a “cap” of seven radio stations (no more than four of which could be in any one service) in a market with between 30-44 commercial or noncommercial full-service radio stations. *See* 47 C.F.R. §73.3555(a)(1)(ii).

3. According to the BIA Media Access Pro database, the Columbus, Ohio market includes a total of 43 full-service radio stations. A listing of the 43 stations is included as Attachment A hereto. Of those, the BIA database attributes a total of seven stations to “Clear Channel Communications” (“Clear Channel”). Clear Channel, of course, is the licensee of Station WFCB(FM) and the proponent of the instant reallotment proposal. But that proposal would move WFCB(FM)’s channel, Channel 227B, from Chillicothe, Ohio – which is outside the Columbus market – to Ashville, Ohio, located in Pickaway County – which is *inside* the Columbus market. In other words, the proposed reallotment would increase Clear Channel’s holdings in the Columbus market to eight stations (five FM, three AM), one above the maximum allowed by the recently-adopted rules. Since that result is prohibited by the rules, the instant proceeding can and should be summarily dismissed.

### **III. A *Tuck* Analysis Demonstrates That Ashville Cannot Be Deemed To Be Independent Of Columbus.**

4. And even if the Commission were to ignore the obvious need to dismiss this matter, the *Tuck* analysis solicited by the *Request* demonstrates that the proposed reallocation could not in any event be adopted. In a *Tuck* analysis, the Commission seeks information which might demonstrate whether a proposed community of reallocation (in this case, Ashville) is in fact independent of a nearby Urbanized Area (in this case, the Columbus, Ohio Urbanized Area) and, therefore, whether the proposed allocation is entitled to consideration as the smaller community's "first local service". Under the Commission's FM assignment policies and procedures, provision of such a "first local service" is a relatively high priority.<sup>2</sup> The *Tuck* analysis involves a three-part test.

#### ***A. The reallocated Channel 227B could deliver a city-grade signal to all, or most, of the Columbus Urbanized Area.***

5. First, the Commission examines the extent to which the proposed facility would serve the urbanized area. If the proposed reallocation would result in the delivery of a signal to only a small portion of the urbanized area, the Commission might have reason to conclude that the reallocation really would result in service to the proposed community of reallocation, rather than the urbanized area. But here this factor weighs against the proposed reallocation. As acknowledged by the Commission in the *Request*, the proposed reallocation coupled with a change in the transmitter site of Station WFCB in the direction of Columbus – a change which the Joint Petitioners have argued can and should be expected – will result in city-grade service to most, if not all, of the Columbus Urbanized Area. Since a Class B facility has a city-grade

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<sup>2</sup> *Id.* See *FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1988)(establishing the FM allocation priorities as (1) first fulltime aural service; (2) second fulltime aural service; (3) first local service; and (4) other public interest matters, with co-equal weight given to Priorities (2) and (3)).

contour extending at least 20 miles, a mere minor modification application specifying, *e.g.*, the Columbus City Hall as the transmitter site would still deliver a city-grade contour to Ashville.<sup>3</sup>

***B. The relative sizes and proximity of the two communities indicate that Ashville is not independent of Columbus.***

6. Second, the Commission examines the relative sizes of the two communities and their proximity to one another. Again, if the proposed community of allotment is relatively large compared to the urbanized area, or if the proposed community is relatively distant from the urbanized area, the Commission might again have reason to conclude that the reallocation would indeed result in service to the community, rather than the urbanized area. But again, this factor weighs heavily *against* the proposal here. The population of Ashville (3,174) is less than one-half of one percent (a mere 0.45%) of the population of Columbus (711,470), and considerably

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<sup>3</sup> We recognize that it is not likely that the reallocation proponent, Clear Channel, would really try to relocate the station's transmitter site to Columbus City Hall. No, we expect that Clear Channel would more likely specify one of the eight towers it already owns within Columbus (ASR Numbers 1013917, 1033684, 1033685, 1033686, 1033687, 1033688, 1033689, 1050660). Clear Channel's track record in a very similar proceeding (MM Docket No. 98-123) involving the reallocation of a channel from Marysville, Ohio, to Hilliard, Ohio, certainly supports such an expectation. In that case, when the dust settled, Clear Channel's "Hilliard" station was broadcasting from ASR 1050660, one of the towers registered to Clear Channel. It should come as no surprise that the coordinates of that tower (39° 58' 10" N, 83° 00' 10" W – centrally located in the heart of Columbus, just blocks from Columbus's "City Center Mall" – see maps included as Attachment B hereto) are *not* the same as the coordinates which Clear Channel urged on the Commission as the reference point for the "Hilliard" allotment (*i.e.*, originally 40° 07' 47" N, 83° 05' 20" W, later amended to 40° 03' 26" N, 83° 08' 36" W). Compare *NPRM* in MM Docket No. 98-123 with BLH-20000626AFT and with "Comments of Citicasters, Inc.", filed September 8, 1998 in MM Docket No. 98-123, at 3. The originally proposed site was well to the north of Hilliard, which in turn is north and west of Columbus. The amended proposed site was still to the north of Hilliard. The site from which the station now operates is in the middle of downtown Columbus.

Of course, Clear Channel has not yet proposed such a relocation in the instant proceeding, and we expect that Clear Channel's own *Tuck* showing will focus on the limited amount of service provided from the station's present transmitter site. But the Joint Petitioners emphasize that, if Clear Channel wishes to rely on that present site, then Clear Channel should be willing to have the reallocated channel restricted to that site, as the Joint Petitioners have repeatedly suggested. Since Clear Channel has repeatedly declined to accept such a restriction, we think it reasonably likely that Clear Channel does not intend to remain at the station's present site for long, particularly in view of Clear Channel's relocation of the Hilliard transmitter site to Columbus.



less than that relative to the population of the Columbus Urbanized Area (which, according to the 2000 U.S. Census, is 1,133,193). The city limits of Columbus are within 10 miles of Ashville. The Commission has found that, where a smaller community is located within 16 miles of a larger (by some eight times) community, those size and proximity factors weighed against a determination that the smaller community was independent of the urbanized area.<sup>4</sup> Here, the population of Columbus is more than 20 times greater than that of Ashville, and the two communities are only 10 miles apart. These factors are strong indicators that Ashville cannot be presumed to be independent of Columbus.

***C. Analysis of the eight Tuck sub-factors further supports a determination that Ashville is not independent of Columbus.***

7. The final factor, the interdependence between the two communities, is comprised of eight sub-factors. A discussion of each is provided below. As is clear from this discussion, coupled with the serious questions arising from the first two elements of the *Tuck* analysis, Ashville must be deemed to be integral to the Columbus area.

*(i) The extent to which the community residents work in the larger metropolitan area rather than the specified community*

8. Ashville is located in close proximity to U.S. Route 23, a main north-south route in Ohio which runs from Mackinac City, Michigan, to Jacksonville, Florida. Route 23 passes within two miles of Ashville, and delivers an Ashville resident into the heart of Columbus, a trip of 19 miles, in approximately 30 minutes.<sup>5</sup>

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<sup>4</sup> *RKO General, Inc.*, 5 FCC Rcd 3222, ¶ 12 (1990).

<sup>5</sup> Attached hereto as Exhibit C are the driving directions from the Ashville Municipal Building to Columbus City Hall.

9. This fact has been recognized by the residential developers in the Greater Columbus area. In recent years, two developments, Ashton Woods and Ashton Village, have been constructed in Ashville, introducing 500 new homes.<sup>6</sup> In fact, local officials have recognized that Ashville is becoming a bedroom community of Columbus.<sup>7</sup> In addition, the Mayor of Ashville recently acknowledged that the City of Columbus is moving southward, and had annexed a major job generator, the Rickenbacker Air Industrial Park, located just minutes from Ashville.<sup>8</sup>

10. As a further demonstration of this creep southward, more than 61% of the population of Pickaway County, in which Ashville is located, works outside of the county.<sup>9</sup> Additionally, the mean commute time for the residents of this small community is 26.5 minutes.<sup>10</sup> As noted previously, a resident of Ashville can drive into central Columbus within 30 minutes. Also, 22% of the employed population of Ashville is employed in “production, transportation, and material moving occupations”, 21% is employed in “management, professional, and related occupations”, and 25% is employed in “sales and office professions”.<sup>11</sup> It is very likely that the majority of this population is traveling north each day, since there are only a limited number of businesses in Ashville that would fall within these categories.

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<sup>6</sup> Columbus Dispatch (Ohio), *Discovering Ashville*, July 2, 1995.

<sup>7</sup> *Id.*

<sup>8</sup> *The State of Ashville Address*, Mayor Chuck Wise (2003)(<http://www.ashvilleohio.net/stateofashville2003.htm>, last visited July 13, 2003).

<sup>9</sup> US Census Bureau, American FactFinder, GCT-P12 – Employment Status and Commuting to Work, Ohio-Place (2003).

<sup>10</sup> US Census Bureau, American FactFinder, DP-3 – Profile of Selected Economic Characteristics, Ashville Village, Ohio (2003).

<sup>11</sup> *Id.*

11. In light of the rural nature of Ashville, its established close proximity to Columbus, and the fact that a majority of Ashville residents drive more than 20 minutes each day to work, it is clear that Ashville residents do not rely upon their community for their livelihood.

*(ii) Whether the smaller community has its own newspaper or other media that cover the community's needs and interests*

12. Our research discloses that Ashville does not have any local media. Instead, it relies upon the media in Columbus, and to a lesser degree, Circleville, for its news and entertainment. This fact was recently illustrated by the Mayor's proud announcement that the Columbus (Ohio) Dispatch featured the Ashville Fourth of July festival.<sup>12</sup> Ashville's sole dedicated media outlet is a weekly column by a resident, Rose Jamison, published in the Circleville Herald.

*(iii) Whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area*

13. As noted above, the chief elected official of Ashville has acknowledged the northward pull of Columbus on Ashville. In his 2003 State of Ashville Address, Mayor Wise expressed grave concern about the flow of tax dollars northward, and the slow creep of Columbus southward.<sup>13</sup>

*(iv) Whether the specified community has its own local government and elected officials*

14. Ashville has its own mayor, city council, and other various elected village officials.

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<sup>12</sup> Circleville (Ohio) Herald, *Ashville council reflects on festival*, July 13, 2003. *See also*, Columbus (Ohio) Dispatch, *Small-Town Fourth is Sweet*, July 5, 2003.

<sup>13</sup> 2003 State of Ashville Address, *supra* nt. 6.

(v) *Whether the smaller community has its own telephone book provided by the local telephone company or zip code*

15. Ashville does not have its own telephone book, nor does it have its own zip code (43103). Instead, it shares both with surrounding communities located on the outskirts of Columbus.

(vi) *Whether the community has its own commercial establishments, health facilities, and transportation systems*

16. While Ashville has several local commercial establishments, it does not have its own health facilities – it relies instead upon Berger Hospital, owned in part by Pickaway County – nor does it have any public transportation within Ashville.

(vii) *The extent to which the community and central city are part of the same advertising market*

17. Ashville is part of the Columbus Metropolitan Statistical Area, the Columbus Arbitron Metro Market, and the Columbus Designated Market Area as designated by Nielsen Media Research. Additionally, the major newspaper, the Columbus Dispatch, considers Pickaway County to be a core section of its advertising market, and part of the Columbus Retail Trading Zone.<sup>14</sup> These factors, coupled with the complete lack of local media, are conclusive evidence that Ashville does not have an advertising market independent from that of Columbus.

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<sup>14</sup> *ABC Reader Profile Audit October 2001 - September 2002*, The Columbus (Ohio) Dispatch (<http://www.dispatch.com/mediakit/readership.html>, last visited July 13, 2003).

(viii) *The extent to which the specified community relies on the larger metropolitan area for various municipal services, such as police, fire protection, schools, and libraries*

18. Ashville is part of the Teays Valley School District, which serves several rural communities in northern Pickaway county.<sup>15</sup> Ashville has its own fire and police forces.

***D. Conclusion re Tuck Analysis***

19. The *Tuck* analysis thus demonstrates that, in the context of the proposed reallocation of Channel 227B, Ashville is not truly independent of Columbus. The first two elements – the level of service delivered (or at least deliverable) to the urbanized area, and the size and proximity of Ashville to Columbus – conclusively demonstrate that Ashville is overshadowed by Columbus and that Station WFCB would be a Columbus station soon after approval of the proposed reallocation. Moreover, Sub-factors (1), (2), (5) and (7) are strong indicators of Ashville's dependence on Columbus, and Sub-factor (3) reflects acknowledgment and concern that Ashville is a bedroom community of Columbus. Only Sub-factor (4), and to a partial degree Sub-factors (6) and (8), begin to support the finding that Ashville is an independent community. While those are factors which might be used to determine whether Ashville is a community for allotment purposes (and the Joint Petitioners have never contested that point), those three factors, standing alone, do *not* demonstrate that Ashville is independent of Columbus.

20. Thus, if *Tuck* were deemed relevant to the disposition of this matter, the proposed reallocation should be rejected.

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<sup>15</sup> See Pickaway County Chamber of Commerce (<http://www.pickaway.com>, last visited July 13, 2003).

**IV. Tuck Has Been Superseded By The Commission's Recently-Adopted Arbitron Market Approach To Radio Service.**

21. But even if the various factors considered under *Tuck* might be deemed to indicate that Ashville is a community somehow separate and independent from the Columbus Urbanized Area, that conclusion would be of no consequence because the Commission, in its recent action relative to multiple broadcast ownership, has embraced a new approach to market and competitive analysis which effectively renders *Tuck* obsolete. As discussed above, in *Ownership R&O*, the Commission announced that, with respect to radio, it will assess multiple ownership in the context of markets as defined by Arbitron. See *Ownership R&O* at ¶¶275-281.

22. The Commission's decision on that point demonstrates the agency's common sense recognition of the real world operation of competing radio stations. As the Commission observed,

Arbitron's market definitions are an industry standard and represent a reasonable geographic market delineation within which radio stations compete. Indeed, the DOJ consistently has treated Arbitron Metros as the relevant geographic market for antitrust purposes. . . . As NABOB succinctly states, "Radio stations compete in Arbitron markets."

*Ownership R&O* at ¶276 (footnotes omitted). According to the Commission, Arbitron-defined markets "reflect more accurately the competitive reality recognized by the radio broadcasting industry." *Ownership R&O* at ¶280.

23. The *Ownership R&O* thus effects a significant change in the Commission's approach to radio markets. No longer will the Commission analyze each station based on the particular reach of that station's particular signal, as was the Commission's past contour-based practice of market analysis. Now, instead, the Commission has concluded that a station licensed to a community in an Arbitron-defined market will be considered to be serving and competing in that market, without regard to the niceties of that station's facilities and operations.

24. According to Arbitron, the Columbus, Ohio market includes Franklin County, in which Columbus is located, as well as, *inter alia*, Pickaway County, in which Ashville is located. See Attachment D. Thus, Ashville is in the Arbitron-defined Columbus market and must be deemed a part of that market. And stations within that market are deemed “likely to serve the larger out-lying metropolitan areas that also comprise Arbitron Metros”. *Ownership R&O* at ¶280. In that regard the *Ownership R&O* appears to undercut the *Tuck* analysis, rendering the *Tuck* analysis of limited continuing utility. That is particularly true here, where Channel 227 – a full Class B channel <sup>16</sup> – is proposed to be moved *out of* Chillicothe, which is *not* in the Arbitron-defined Columbus market, *and into* Ashville, which *is* in that market. If the Commission intends to continue to utilize the now-apparently-superseded *Tuck* analysis, the Commission will have to explain how it can purport to do so consistently with the *Ownership R&O* and the policies underlying that decision.

**V. Reliance, In Allotment Proceedings, On Predictions Of Possible “Local Service” Is Arbitrary And Capricious In View Of The Commission’s Inability And/or Disinclination To (a) Establish Definitional Standards For Such Service Or (b) Retain The Ability To Monitor, And In Fact Monitor, Such Service.**

25. Others may attempt to suggest that *Tuck* survives the *Ownership R&O* because (a) *Tuck* is based on some anticipation of local service to a local community inherent in the Commission’s licensing process and (b) the *Ownership R&O* similarly contemplates such “local service”. The problem there, however, is that the notion of “local service” in this context is a regulatory mirage, a non-functional vestige of a different regulatory regimen abandoned by the Commission over the last two decades.

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<sup>16</sup> It seems odd that the Commission would consider use of Channel 227B, a relatively higher-powered channel, at Ashville, whose population is approximately one-fifth that of Chillicothe.

26. To be sure, the Commission continues to assert, as it has for decades, that “we require radio stations to serve their communities of license”, *Ownership R&O* at ¶280. And many, many radio stations no doubt provide very substantial local service to their respective communities of license. But such performance occurs more likely as a result of the licensees’ private sense of public responsibility than as a result of any Commission “requirement” because the Commission’s rules provide no indication at all about what any such “requirement” might entail, or how licensees might satisfy that “requirement”. More importantly, the Commission has absolutely no ability, and has shown no inclination, to monitor the nature and extent of any licensee’s “local service” to determine whether that supposed “requirement” is being satisfied.

27. From the earliest days of broadcasting the Commission has licensed broadcast stations to particular communities pursuant to Section 307(b). And for years the Commission *did* impose a number of specific regulatory obligations through which it sought to assure that stations would in fact provide local service to their respective communities of license. These included requirements that:

- each broadcast licensee undertake extensive efforts to meet with representative leaders of local community groups and members of the general public within their communities of license to apprise themselves of the needs and interests of the community and to establish lines of direct communication between those community representatives and the station, *e.g.*, *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC2d 650 (1971) (“*Ascertainment Primer*”); *Ascertainment of Community Problems by Broadcast Applicants*, 57 FCC2d 418, *recon. Granted in part*, 61 FCC2d 1 (1976) (“*Renewal Primer*”);
- each broadcast licensee maintain detailed logs (representative samples of which were submitted to the Commission for its review with the station’s renewal application) which delineated, *inter alia*, the station’s local programming, *e.g.*, *Reregulation of Radio and TV Broadcasting*, 69 FCC2d 979, 1002-1008 (1978); *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1422 (D.C. Cir. 1983) (“*UCC I*”), while the processing of license renewal applications included consideration of the amount of local programming reflected in the application, *e.g.*, *Amendment of Section 0.281 of the Commission’s Rules*, 59 FCC2d 491 (1976); *Intercontinental Radio, Inc.*, 98 FCC2d 608, 620-623



(Rev. Bd. 1984) (assessment of renewal applicant's program performance includes references to "local" source of programming);

- each broadcast licensee maintain a main studio in the community of license, from which a majority of the station's programming had to originate, *e.g.*, *Main Studio Location*, 27 FCC2d 851 (1971) ("*Main Studio I*"); *Reiteration of Policy Regarding Enforcement of Main Studio Rule*, 55 Rad. Reg.2d (P&F) 1178 (1984); *Main Studio and Program Origination Rules for Radio and Television Stations*, 2 FCC Rcd 3215, 3218 (¶38) (1987) ("*Main Studio II*");
- each broadcast licensee maintain, at its main studio (or elsewhere in its community of license), a local public inspection file containing information about the station's operations, which file would be available to the public during regular business hours, *e.g.*, 47 C.F.R. §73.3526; *UCC I*, 707 F.2d at 1438-1442; *Main Studio II*, 2 FCC Rcd at 3218 (¶38).

While these rules, and the close interaction between station and public which they sought to encourage, might arguably have afforded the Commission some means, albeit indirect<sup>17</sup>, of assuring "local service", over the past 20 years each of these requirements has been either eliminated or diluted to the point of total ineffectiveness. Thus, there is no regulatory basis which might support the presumption that a station licensed to a community will necessarily serve that community. To the contrary, as discussed *infra*, the trend of Commission decisions in this area has been directly counter to that presumption.

#### ***A. The ascertainment requirement***

28. In connection with its efforts to assure that licensees provide program service tailored to their communities of license, the Commission once mandated that radio licensees undertake detailed investigation concerning the needs and interests of their respective communities of license. *See Ascertainment Primer; Renewal Primer*. This investigative process (generally referred to as "ascertainment") required that licensees interview representative leaders

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<sup>17</sup> The indirectness of the Commission's approach is no doubt attributable to the Commission's understandable reluctance, borne of First Amendment considerations, to engage in direct regulation of program content.

of various interest groups and conduct random surveys of the general public, all within their communities of license. *Id.* The regulatory goal was to create a system which, if implemented properly, was thought to assure that each licensee had a clear basis for formulating programming directed to its community of license. Through the ascertainment process members of the community of license were put in direct contact with representatives of the licensee. The Commission might have legitimately presumed that compliance with these elaborate ascertainment requirements might lead licensees to provide “local service” (however that term might be defined).

29. But the ascertainment requirements were eliminated by the Commission in 1981 as part of its deregulation of radio. *Deregulation of Radio*, 84 FCC2d 968, 993-999 (¶¶55-72) (1981) *recon. granted in part*, 87 FCC2d 796 (1981), *aff’d in relevant part*, UCC I, 707 F.2d at 1435. While the FCC continues to expect, in the vaguest of terms, that licensees somehow familiarize themselves with their communities of license, *Deregulation of Radio*, 84 FCC2d at 998; 87 FCC2d at 822-823, such familiarity may be gained by virtually any means. There is *no* requirement that licensees actually interact with any leaders (or even mere residents) of their respective communities of license, and there is *no* requirement that licensees even set foot in those communities. The FCC’s abandonment of ascertainment, and the purely vestigial form of that requirement which remains in place today, cannot be said to give the Commission any confidence that any station is in fact providing “local service”. To the contrary, the regulatory trend has been in precisely the opposite direction.

***B. The program logging requirement and routine consideration of local programming performance***

30. The Commission’s rules used to require each licensee to maintain detailed program logs which included specific notations concerning *local* programming broadcast. *E.g.*,

*Reregulation of Radio and TV Broadcasting*, 69 FCC2d at 1002-1008 (setting out complete text of program logging rules then in effect). Copies of these logs were required to be made available to the public upon request. *Id.*, 69 FCC2d at 1002. The license renewal application required detailed programming showings based on a “composite week” designated by the FCC -- and the license renewal applicant was required to submit, as part of its application, copies of the logs on which its programming showing was based. Assessment of renewal applications included consideration of, *inter alia*, the applicant’s local programming. *See, e.g., Intercontinental Radio, Inc., supra*. There was thus clear regulatory incentive for licensees to be mindful of the **local** nature of their operations, and the Commission clearly had a mechanism by which a station’s actual “local” performance could be empirically assessed.

31. But as part of the radio deregulation proceeding in 1981, the Commission also eliminated the program logging requirement. *Deregulation of Radio*, 84 FCC2d at 1008-1010. While the Court twice expressed concern about this drastic step, *see UCC I*, 707 F.2d at 1438-1442; *Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702, 707-714 (D.C. Cir. 1985) (“*UCC II*”), the Commission declined to re-impose logging requirements.

32. Moreover, as part of the deregulation of television, the Commission eliminated any consideration of the precise amount of local programming broadcast during the preceding license term. *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC2d 1076 (1984). This further attenuated the Commission’s ability to monitor actual performance. It also further attenuated the notion that any particular level of “local” performance might be expected of licensees – if, after all, they were not required to keep track of such performance, much less provide any reports of such performance to the Commission, how could they be

expected to understand that there might be any continued regulatory significance to such performance?

***C. The rules regarding location of the main studio, the local origination of programming, and the maintenance of a local public inspection file***

33. From the earliest days of broadcasting the Commission emphasized that a station's close connection with its community of license was dependent in large part on the fact that the station's main studio had to be physically located in that community. For example, addressing program origination rules for AM and FM stations in 1950, the Commission observed that

[I]t is apparent that §307(b) and the Commission's efforts to apply it may be largely frustrated if, after a station is licensed for the purpose of providing both reception and transmission service to a particular community, it removes its main studio to a distant point and originates all or substantially all of its programs in a city or town other than that which it was licensed to serve. Such action on the part of the station may substantially cut away the basis of the Commission's decision authorizing the establishment of the station.

*Promulgation of Rules and Regulations Concerning the Origination Point of Programs of Standard and FM Broadcast Stations*, 43 FCC 570, 571 (1950) ("*Origination Point of Programs*"). See also, e.g., *Main Studio I*, 27 FCC2d at 803 (1971) (stating that maintenance of a main studio in a station's community of license is "one of the essential ways . . . [of] insuring that stations realistically meet their obligation to serve their communities of licenses as outlets for local self-expression"); *Reiteration of Policy Regarding Enforcement of Main Studio Rule*, 55 Rad. Reg.2d (P&F) 1178 (1984).

34. Closely associated with the main studio requirement were two additional requirements: (1) that each station originate the majority of its programming from that main studio, e.g. *Origination Point of Programs*, 43 FCC at 571-572; *Main Studio II*; and (2) that each station maintain at its main studio (or elsewhere in its community of license) a file, available for

routine inspection by the public, containing materials relating to the licensee's performance, *e.g.*, *UCC I*, 707 F.2d at 1439 (citing the FCC's emphasis on the significance of the public file in the licensing process); *UCC II*, 779 F.2d at 708-710; *Black Citizens for a Fair Media v. FCC*, 719 F.2d 407, 414-415 (D.C. Cir. 1983). These main studio-related obligations were further means of assuring interaction between the station and its community of license, and thus might -- *arguendo* -- have afforded some basis for a presumption of "local" service.

35. But the program origination rule was eliminated in 1987. *Main Studio II*, 2 FCC Rcd at 3218-3219. Licensees have not been required to originate *any* particular amount of programming from their respective communities of license for more than 15 years.

36. And, while the public file rule remains in effect, its utility in bringing the station and community of license together has been dramatically reduced by the fact that the main studio is no longer required to be maintained in the community of license -- and may be located in some instances as much as 80 miles or more from that community -- and the public file now must be maintained *only* at the main studio, wherever that may be.

37. Prior to 1987, with only limited exceptions a broadcast station was required to have its main studio in its community of license. *Id.*, 2 FCC Rcd at 3215-3216. As noted above, the Commission had repeatedly held that the physical location of a main studio in a community of license was of substantial regulatory importance. But in 1987 the Commission diluted that requirement considerably, providing that the main studio could be established anywhere within the station's 3.16 mV/m signal contour. *Id.* The 3.16 mV/m signal contour of a Class B station such as WFCB(FM) extends outward from the station's transmitter in a circle with a radius of slightly more than 20 miles. *See, e.g., Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, 13 FCC Rcd 15691, 15696, n. 26 (1998) ("*Main*

*Studio III*"). Thus, assuming a community location near the edge of the relevant signal contour, the main studio of a Class B station could theoretically be located up to about 40 miles from its community of license. (A more powerful Class C station, with a 3.16 mV/m signal contour extending out a radius of more than 40 miles, *id.*, could theoretically locate its main studio more than 80 miles from its community of license.)

38. Quite obviously the 1987 change meant that stations were no longer closely tethered to their respective communities of license.

39. Perhaps sensitive to the fact that, in affirming the deregulation of radio, the Court of Appeals had placed considerable emphasis on the continuing availability to the public of the local public file <sup>18</sup>, the Commission did temporarily continue to require that each licensee maintain its public file in the community of license, regardless of where its main studio might be. *See Main Studio II*, 2 FCC Rcd at 3218 (¶38). But even that limited tie between station and community of license was abandoned in 1998. *Main Studio III, supra*. There the Commission further diluted its main studio rule -- by considerably expanding the area outside the community of license in which main studios may be located <sup>19</sup> -- and eliminated the requirement that a copy of each station's local public file be maintained in the station's community of license.

40. In view of the clear and unmistakable regulatory direction *away from* any required physical or programming-based connection between a station and its community of

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<sup>18</sup> *See, e.g., UCC II*, 779 F.2d at 708-710.

<sup>19</sup> The expansion permits stations to locate their main studios within the 3.16 mV/m contour of any other station licensed to the same community, regardless of the respective classes of the two stations. In other words, a Class B station licensed to a community to which a full Class C station is also licensed would be permitted to locate its main studio anywhere within the 3.16 mV/m contour of the full Class C station which, as noted above, could place the studio more than 80 miles from the community of license. The revised rule also permits the main studio to be located *anywhere* within a 25 mile radius of the community of license, regardless of the reach of any station's 3.16 mV/m contour. *See Main Studio III*.

license, the fanciful notion at the core of the *Tuck* – i.e., that a station is subject to some discernible “local service” obligation, compliance with which can be monitored and enforced – runs plainly against the grain of the development of Commission policy over the last 20 years.

***D. Changes in the Communications Act of 1934, as amended, have further eliminated means by which the supposed “local service” requirement might have been monitored and enforced.***

41. A similar trend is evident in statutory developments arguably relating to the notion of “community of license”. The Communications Act itself imposes no specific obligations relative to a station’s relationship to its community of license. But the Act has included mechanisms which the Commission has viewed as providing incentives to assure that a licensee pays appropriate attention to its local audience. Those mechanisms were the comparative renewal process and the petition to deny process.

42. Under the comparative renewal process, incumbent renewal applicants were subject to challenge by competing applicants. *See, e.g., Central Florida Enterprises, Inc. v. FCC*, 683 F.2d 503 (D.C. Cir. 1982); *Monroe Communications Corporation v. FCC*, 900 F.2d 351 (D.C. Cir. 1990). Again, this process did not itself mandate that licensees provide distinctly “local” service to their respective communities of license, but it did create an incentive for licensees to serve their local audiences. The Commission cited that incentive in 1983 as a basis for abandoning a number of regulatory policies intended to discourage the reallocation of channels from smaller rural communities to already well-served communities in or adjacent to large metropolitan areas. *See Suburban Policy, Berwick Policy and De Facto Reallocation Policy*, 93 FCC2d 436, 456 (1983); *see also Roberts Communications, Inc.*, 11 FCC Rcd 1138, 1139 (1996). In other words, in 1983 the Commission observed that its own regulatory policies were an unnecessary belt in light of the fact that the comparative renewal policy served effectively as suspenders. Accordingly, the Commission removed its belt.

43. But since 1996 the suspenders have been gone, too. The comparative renewal process was statutorily eliminated in February, 1996. *See Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996). Whatever the salutary benefits the comparative renewal process might possibly have led to, the elimination of that process precludes reliance on the expectation of any such benefits. The defunct comparative renewal process provides no mechanism by which the Commission can hope to monitor or enforce any supposed “local service” requirement.

44. The petition to deny process does remain in effect. *See* 47 U.S.C. §309(d) and (k). But there is no evidence at all that that process serves to cement the relationship between a station and its community of license or foster “local service”. Indeed, undersigned counsel is unaware of any instance in more than 20 years in which the Commission has denied or designated for hearing a license renewal application based on a petition to deny alleging insufficient attention by the station to its community of license.

45. And while the petition to deny process might afford a mechanism by which the Commission could conceivably afford petitioners the opportunity to complain to the Commission about a perceived lack of “local service”, such complaints could not be rationally assessed and assayed by the Commission because, as discussed above, the Commission has *not* announced – either in any rule or in any policy statement or in any case-by-case adjudication – the metes and bounds of any “local service” requirement, nor has the Commission maintained any ability to assess empirically the “local service” of any licensee.

46. The Commission thus finds itself in a position precisely analogous to its situation in the *Bechtel* case. *See, e.g., Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). In *Bechtel*, the Commission had for years implemented a comparative licensing system which depended in large



part on the supposedly predictive value of the “integration” analysis. The conceptual validity of that analysis at the time of its initial implementation, in the 1940s, and even at the time of its formal announcement in the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC2d 393 (1965) in 1965, may have been reasonable. But by the late 1980s, regulatory changes adopted by the Commission over a period of years had undermined any seeming validity of the integration analysis, and the Commission was unable to provide any showing that that analysis in fact produced or was likely to produce any of the salutary effects which it was intended to produce. As a result, the Court held that the integration policy was arbitrary and capricious and ordered the Commission not to utilize that policy.

47. In the instant case we are presented with the Commission’s “local service” policy – characterized as a “requirement” in the *Ownership R&O* (at ¶280) – which, although of completely indeterminate dimensions, supposedly justifies the relocation of a channel from Chillicothe, *i.e.*, outside the Columbus market, to Ashville, *i.e.*, inside the Columbus market. But the Commission has absolutely no way of knowing whether the channel, if reallotted to Ashville, will in fact provide “local service” to Ashville in any meaningful sense. The Commission has not defined exactly how such “local service” might be identified, and even if it had, the Commission has, over the course of the last two decades, abandoned all of the regulatory devices by which it might have hoped to monitor and assess the provision of such “local service”. Consistently with those considerations, the Commission has made no effort to confirm whether reallotments supposedly intended to result in such “local service” to a particular community have in fact resulted in such service.<sup>20</sup>

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<sup>20</sup> An obvious, but certainly not the only, such situation is the reallotment of Channel 289A from Marysville to Hilliard, Ohio, effected in MM Docket No. 98-123. As noted in Footnote 3, above, Clear Channel sought that reallotment, initially proposing a transmitter site well north of Hilliard, which is in  
(Footnote continued on next page)

48. Any reference by the Commission to “local service” in the context of a reallocation proceeding is thus nothing more than a superstitious incantation, a crossing of the fingers, a wave of the magic wand – or any other ineffectual gesture intended to create the false impression that the agency might have some control over the outcome.

49. The *Tuck* analysis accords overriding decisional importance to the perception that a community has a need for a “local service” and that such “local service” will perforce result from the requested allotment or re-allotment. But there is absolutely no regulatory basis for that latter conclusion. At most, it is wishful thinking based on an historic regulatory regime long since abandoned by the Commission.

50. Again, there is no current rule setting out the scope of any supposed “local service” obligation.<sup>21</sup>

51. And even if there were some currently enforceable regulatory basis, the Commission has absolutely no means by which it can, today, determine whether (and if so, the extent to which) any particular station may have complied or may be complying with that local service “requirement”.<sup>22</sup> Not only are there no discernible standards by which such compliance might be gauged, but there are no underlying data which could be measured against such

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*(Footnote continued from preceding page)*

turn well north (and to the west) of Columbus. But lo and behold, once the channel had been reallocated, Clear Channel applied to relocate the transmitter site of the newly-minted “Hilliard” channel to a site in the middle of Columbus. To the best of Joint Petitioners’ knowledge, the Commission has made no effort since then to determine what, if any, of that station’s programming is directed to Hilliard.

<sup>21</sup> Of course, if the Commission can cite to any rule setting out in detail the metes and bounds of the supposed “requirement” of local service which is at the heart of the *Tuck* analysis, the Joint Petitioners invite the Commission to do so.

<sup>22</sup> Here again, if the Commission can demonstrate that it indeed has the means to monitor compliance with its supposed programming “requirement”, and if it can similarly demonstrate that it has in fact performed such monitoring, the Joint Petitioners invite the Commission provide such a demonstration.

standards, nor are there are regulatory means in place (*e.g.*, program logs) from which such data might be gleaned, nor, to the best of our knowledge, has the Commission ever made any effort to determine empirically whether the crucial assumption underlying the *Tuck* analysis – *i.e.*, that channels allotted pursuant to that analysis result in “local service” in any meaningful sense – has proven to be valid in *any* situation.<sup>23</sup>

52. The Commission would click its heels three times, repeat “Ashville warrants a first local service”, and magically reach the happy conclusion that, sure enough, Channel 227B can be moved into Ashville because the Commission guesses that that reallocation will result in such local service. But that would be an exercise in smoke and mirrors, a substanceless, result-oriented approach the ultimate validity of which cannot be demonstrated, either now or in the future.

53. Of course, if the Commission were truly committed to the notion that Channel 227B should be reallocated to Ashville to serve as a purely local Ashville facility, one step in that direction would be the step which the Joint Petitioners have consistently proposed throughout this proceeding: a site limitation can and should be imposed on the channel to prevent it from being “leap-frogged” into the middle of the Columbus market.<sup>24</sup> By keeping the

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<sup>23</sup> By making this argument, the Joint Petitioners do *not* intend to suggest that the Commission should re-impose ascertainment, program logs, or any other similar hallmarks of the Age of Regulation. The elimination of those burdensome obligations has unquestionably had beneficial effects on the broadcast industry. Similarly, the Joint Petitioners do not doubt that the notion of “local service” may be a valid regulatory consideration. But the Commission *cannot* claim to be acting to promote “local service” when the Commission has not defined “local service” and has no way of measuring “local service” and has repeatedly and consistently acted to dismantle any means by which such definition and measurements might be derived. Having created – quite properly and for good reason and with the approval of the courts – a regulatory vacuum, the Commission cannot at the same time make allotment decisions based on considerations which cannot exist because of that vacuum. As was the case in *Bechtel*, by taking such an approach the Commission acts arbitrarily and capriciously and, therefore, unlawfully.

<sup>24</sup> As a Class B channel, Channel 227B would have a city-grade contour with a radius of slightly more than 20 miles. Since Ashville happens to be just about 20 miles from Columbus, it does not take much  
(Footnote continued on next page)

channel's service area locally-oriented around Ashville and away from Columbus, the Commission would at least be acting consistently with its expressed interest in "local service" for Ashville.

54. The proponent of the reallocation proposal has consistently resisted such a site limitation. Such resistance would be curious if the proponent were truly interested in providing Ashville a "local service" – since the proposed site restriction would obviously permit it to provide precisely such service. Such resistance would not be curious at all if the proponent intends to utilize the channel to supplement its already extensive operations in Columbus.

55. In view of all of the above, the Joint Petitioners renew their opposition to the proposed reallocation. As demonstrated above, the requested *Tuck* establishes that the channel should not be reallocated as proposed. And more fundamentally, the *Tuck* analysis has been superseded by the Commission's recently-adopted reliance on Arbitron markets – a reliance which in this case further confirms that Ashville is just a part of the Columbus market. And


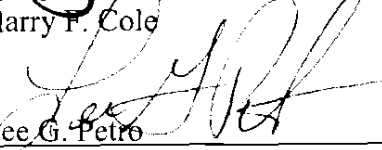
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*(Footnote continued from preceding page)*


imagination to recognize that that channel could be operated from a transmitter site in or immediately proximate to Columbus. While such operation could likely result in proper city-grade coverage of Ashville, it would also have the fortuitous effect of providing city-grade coverage to all or most of Columbus.

finally, the Commission cannot legitimately invoke the *Tuck* analysis because that analysis is based on a core assumption which the Commission has never shown, and cannot presently show, to be valid and effective.

Respectfully submitted,

  
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July 17, 2003

## **ATTACHMENT A**



## FCC Geographic Market Definition for Columbus, OH

Call Letters	AM/FM	Freq	Type Station	Format	Home Market	Home Mkt Rank	Owner	City & State of License	County of License
WAZU	FM	107.1	C	New Rock	Columbus, OH	35	Infinity Broadcasting	Circleville, OH	Pickaway
WFJX	FM	105.7	C	Clsc Rock	Columbus, OH	35	Clear Channel Communications	Hilliard, OH	Franklin
WBNS	FM	97.1	C	Hot AC	Columbus, OH	35	Radio Ohio, Inc.	Columbus, OH	Franklin
WBNS	AM	1460	C	Sprts/Talk	Columbus, OH	35	Radio Ohio, Inc.	Columbus, OH	Franklin
WBZX	FM	99.7	C	AOR	Columbus, OH	35	North American Broadcasting Company	Columbus, OH	Franklin
WODB	FM	107.9	C	Oldies	Columbus, OH	35	Saga Communications Inc	Delaware, OH	Delaware
WJYD	FM	106.3	C	Gospel	Columbus, OH	35	Radio One Inc	London, OH	Madison
WCLT	FM	100.3	C	Country	Columbus, OH	35	WCLT Radio Inc	Newark, OH	Licking
WCLT	AM	1430	C	Nws/Tlk/Spt	Columbus, OH	35	WCLT Radio Inc	Newark, OH	Licking
WCOL	FM	92.3	C	Country	Columbus, OH	35	Clear Channel Communications	Columbus, OH	Franklin
WZNW	AM	1230	C	Sprts/Talk	Columbus, OH	35	Clear Channel Communications	Columbus, OH	Franklin
WCVO	FM	104.9	C	Religion	Columbus, OH	35	Christian Voice of Central Ohio, Inc	Gahanna, OH	Franklin
WDLR	AM	1550	C	Country	Columbus, OH	35	Fifteen Fifty Corporation	Westerville, OH	Delaware
WHOK	FM	95.5	C	Country	Columbus, OH	35	Infinity Broadcasting	Lancaster, OH	Fairfield
WHTH	AM	790	C	Talk	Columbus, OH	35	Runnymede Corp	Heath, OH	Licking
WCKX	FM	107.5	C	Urban	Columbus, OH	35	Radio One Inc	Columbus, OH	Franklin
WXMG	FM	98.9	C	R&B Oldies	Columbus, OH	35	Radio One Inc	Upper Arlington, OH	Franklin
WLOH	AM	1320	C	Oldies	Columbus, OH	35	Frontier Broadcasting LLC	Lancaster, OH	Fairfield
WLWQ	FM	96.3	C	AOR/CIRck	Columbus, OH	35	Infinity Broadcasting	Columbus, OH	Franklin
WMNI	AM	920	C	Adlt Stndrd	Columbus, OH	35	North American Broadcasting Company	Columbus, OH	Franklin
WMVO	AM	1300	C	Variety	Columbus, OH	35	Clear Channel Communications	Mount Vernon, OH	Knox
WNCI	FM	97.9	C	CHR	Columbus, OH	35	Clear Channel Communications	Columbus, OH	Franklin
WNKO	FM	101.7	C	Oldies	Columbus, OH	35	Runnymede Corp	Newark, OH	Licking
WOBN	FM	101.5	NC	Variety	Columbus, OH	35	Otterbein College	Westerville, OH	Franklin
WOSU	AM	820	NC	News/Talk	Columbus, OH	35	Ohio State University	Columbus, OH	Franklin
WQIO	FM	93.7	C	80s Hits	Columbus, OH	35	Clear Channel Communications	Mount Vernon, OH	Knox
WRFD	AM	880	C	Chrst/Talk	Columbus, OH	35	Salem Communications Corporation	Columbus-Worthington, OH	Franklin
WSLN	FM	98.7	NC	Variety	Columbus, OH	35	Ohio Wesleyan University	Delaware, OH	Delaware
WSMZ	FM	103.1	C	Urban AC	Columbus, OH	35	Stop 26-Riverbend Incorporated	Johnstown, OH	Licking
WSNY	FM	94.7	C	AC	Columbus, OH	35	Saga Communications Inc	Columbus, OH	Franklin
WJZA	FM	103.5	C	Smooth	Columbus, OH	35	p Saga Communications Inc	Lancaster, OH	Fairfield
WTVN	AM	610	C	Nws/Tlk/Spt	Columbus, OH	35	Clear Channel Communications	Columbus, OH	Franklin
WUCO	AM	1270	C	Country	Columbus, OH	35	Frontier Broadcasting LLC	Marysville, OH	Union
WVKO	AM	1580	C	Gospl/Inspr	Columbus, OH	35	Stop 26-Riverbend Incorporated	Columbus, OH	Franklin

"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed



## FCC Geographic Market Definition for Columbus, OH

Call Letters	AM/FM	Freq	Type Station	Format	Home Market	Home Mkt Rank	Owner	City & State of License	County of License
WWCD	FM	101.1	C	Alternative	Columbus, OH	35	Ingleside Radio Inc	Grove City, OH	Franklin
WJZK	FM	104.3	C	Smooth	Columbus, OH	35	p Saga Communications Inc	Richwood, OH	Union
WEGE	FM	103.9	C	Clsc Hits	Columbus, OH	35	North American Broadcasting Company	Westerville, OH	Franklin
WOSU	FM	89.7	NC	Classical	Columbus, OH	35	Ohio State University	Columbus, OH	Franklin
WFCO	FM	90.9	NC	Gospel	Columbus, OH	35	Lancaster Education Broadcasting Foundation	Lancaster, OH	Fairfield
WCBE	FM	90.5	NC	News/Altve	Columbus, OH	35	Columbus City School District	Columbus, OH	Franklin
WDUB	FM	91.1	NC	AOR	Columbus, OH	35	Denison University	Granville, OH	Licking
WUFM	FM	88.7	NC	New Rock	Columbus, OH	35	Spirit Communications	Columbus, OH	Franklin
WLRY	FM	88.5	NC	ChrsContem	Columbus, OH	35	Arcangel Broadcasting Foundation	Rushville, OH	Fairfield

Number of Stations in Geographic Market 43


"C" - Commercial Station; "NC" - Non Commercial Station

"p" indicates pending sale to owner listed




**ATTACHMENT B**

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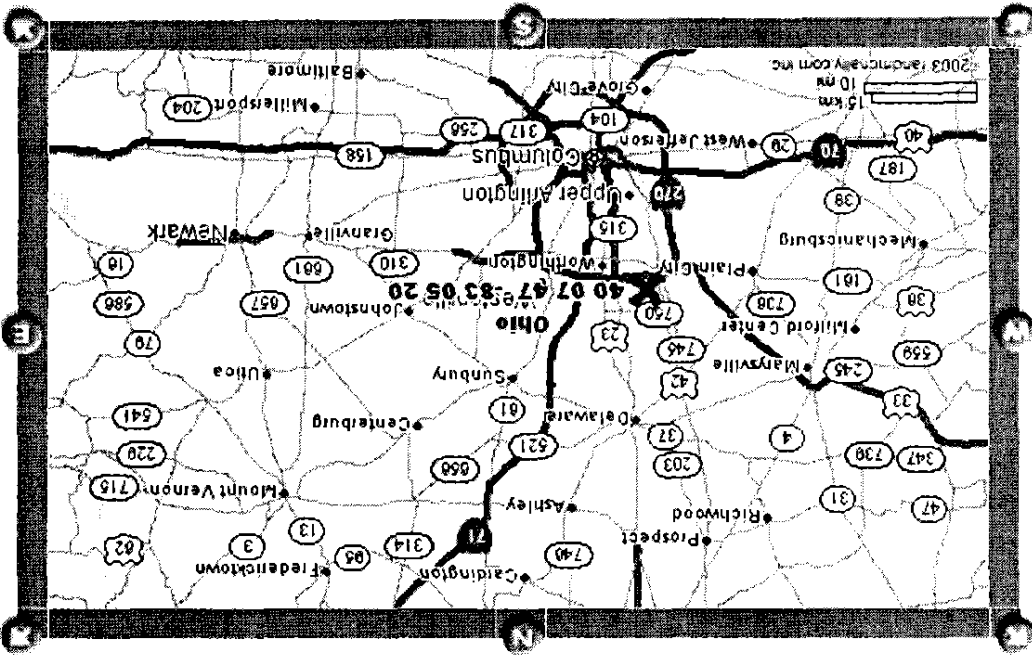
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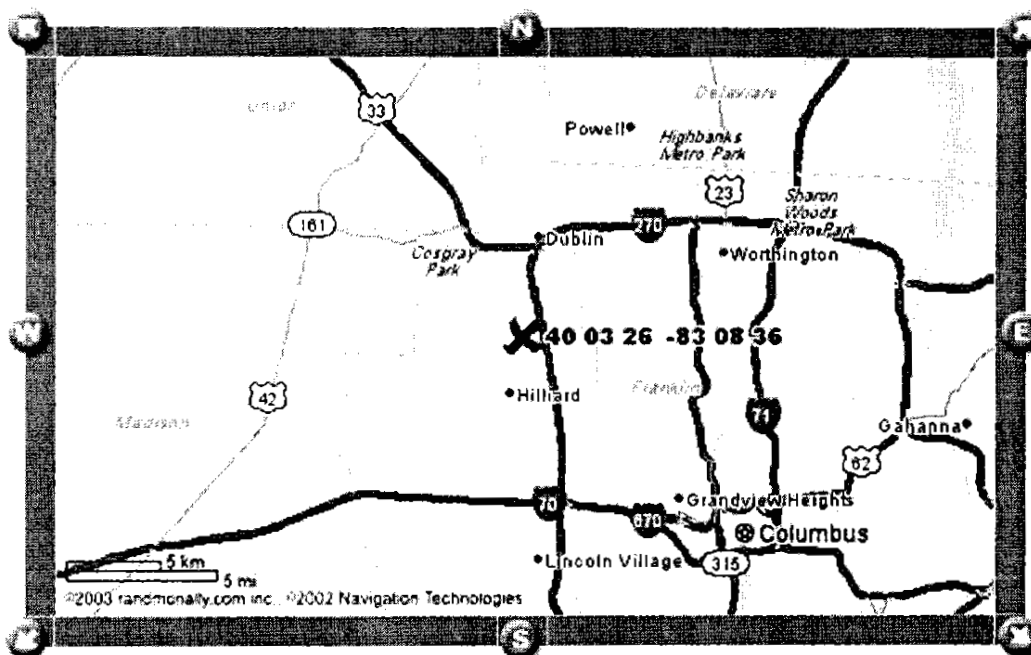

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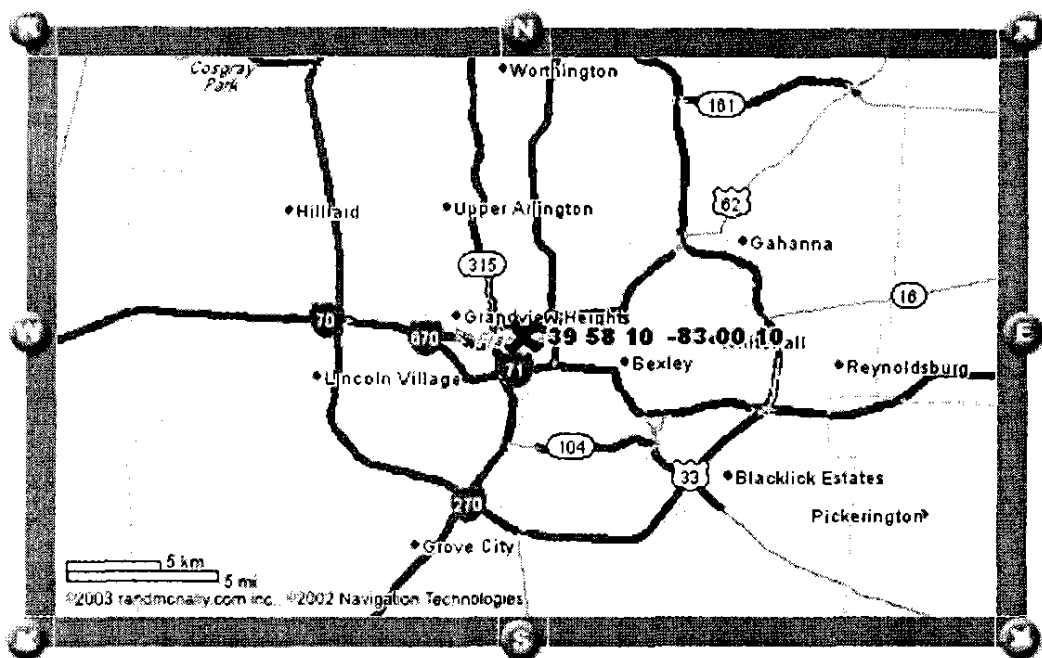
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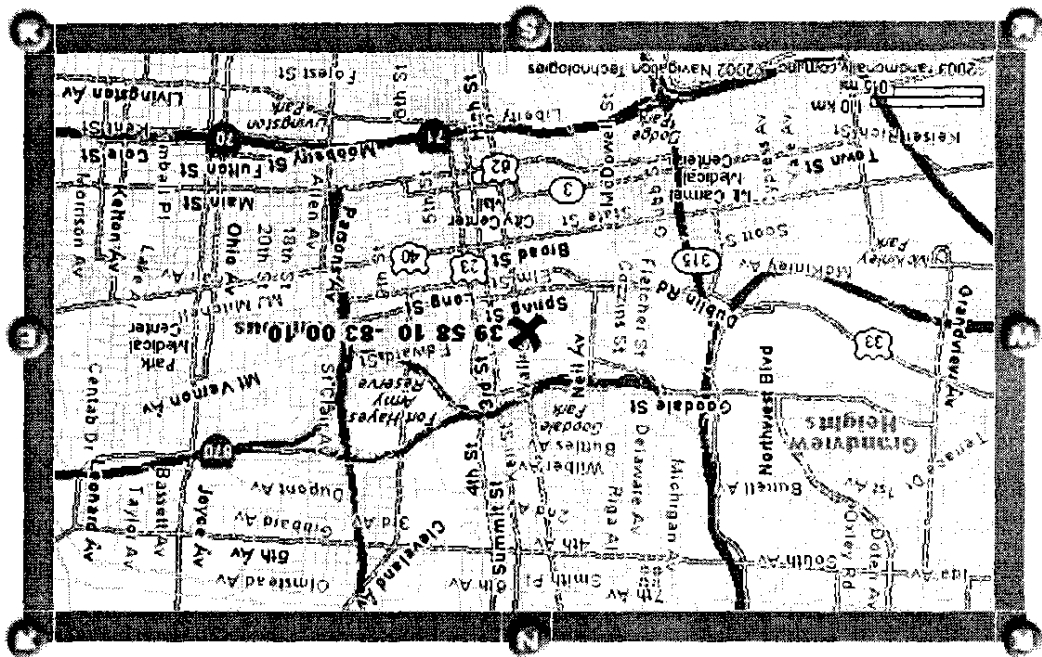
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- page 81, Columbus detail map
- page 80, grid section SA-9
- page 80, grid section SB-9

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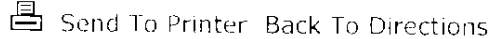
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## **ATTACHMENT C**

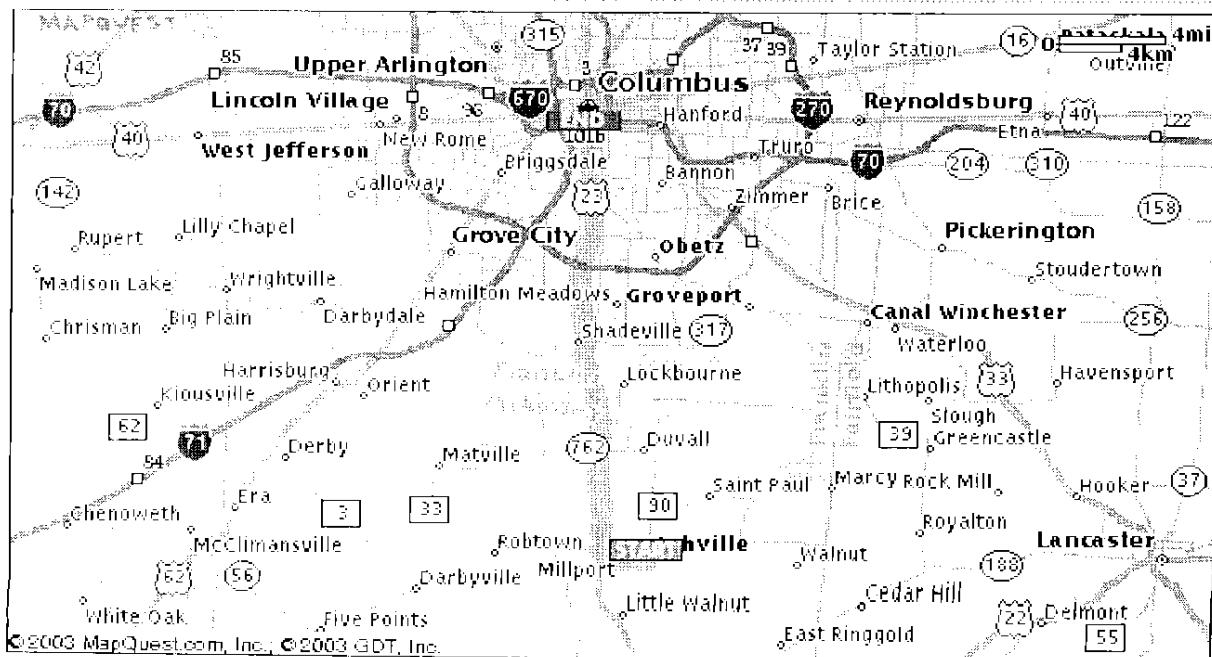


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**Total Estimated Time:**  
32 minutes

### Distance

- |                          |  |                    |
|--------------------------|--|--------------------|
| <input type="checkbox"/> | <b>1. Start out going West on OH-316/W MAIN ST toward CROMLEY ST.<br/>Continue to follow OH-316.</b> | <b>1.69 Miles</b>  |
| <input type="checkbox"/> | <b>2. Turn RIGHT onto US-23 S/OH-316 E/WALNUT ST. Continue to follow<br/>US-23 S.</b>                | <b>15.60 Miles</b> |
| <input type="checkbox"/> | <b>3. Turn LEFT onto W GATES ST.</b>   | <b>0.07 Miles</b>  |
| <input type="checkbox"/> | <b>4. Turn RIGHT onto S FRONT ST.</b>  | <b>1.72 Miles</b>  |
| <input type="checkbox"/> | <b>5. Turn LEFT onto W BROAD ST/US-40.</b>   | <b>0.02 Miles</b>  |



**End:**  
90 W Broad St  
Columbus, OH  
43215-9000 US

## **ATTACHMENT D**



## MARKET DEFINITIONS FOR ARBITRON SURVEYS

To see the Arbitron market definitions for a specific area, please select a survey period and market from the list below and click the "Run Report" button.

For more information about Arbitron's market definitions, please contact Melanie Andrews at [melanie.andrews@arbitron.com](mailto:melanie.andrews@arbitron.com).

---

Select a Survey: Summer 2003

Market:

Columbus, OH

[Or choose market by state](#)

Run Report

Reset

### Arbitron Market Definition for Columbus, OH, Summer 2003

Delaware	OH	Fairfield	OH
Franklin Balance	OH	Franklin HDBA	OH
Licking	OH	Madison	OH
Pickaway	OH	Union	OH

---

HDBA -- High-Density Black Area  
HDHA -- High-Density Hispanic Area

For Arbitron surveys conducted in the U.S., each Arbitron radio market is composed of up to two geographic areas: the Metro Survey Area (Metro) and the Total Survey Area (TSA).

The Metro includes one or more counties and is the primary survey area. The TSA includes all of the counties in the Metro as well as one or more non-Metro counties contiguous to the Metro area. Essentially, non-Metro TSA counties are areas where local residents can hear neighboring local radio stations.

Arbitron market definitions are relatively static. When there is a market redefinition, it is implemented in either the Spring or Fall surveys. For a full description of how Arbitron defines and updates its markets, please see our [Description of Methodology](#).

For more information on zip codes or cities, [call your Arbitron representative](#)

**CERTIFICATE OF SERVICE**


I, Harry F. Cole, hereby certify that on this 17th day of July, 2003, I caused copies of the foregoing "Comments in Response to 'Request for Supplemental Information'" to be placed in the U.S. Postal Service, first class postage prepaid, or hand delivered (as indicated below), addressed to the following persons:

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Media Bureau  
Federal Communications Commission  
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/s/ Harry F. Cole  
Harry F. Cole